

### **REMARKS**

Applicant respectfully requests reconsideration and allowance of claims 1 and 6-16 and 18-21 that are pending in the above-identified patent application. By the foregoing amendment, Applicant has amended claims 1, 16, and 21 herein. Claims 4 and 5 have been canceled. New claims 22-26 have been added. No new matter is added by the amendment. In view of the following discussion, Applicant submits that all pending claims are in condition for allowance.

#### **I. Rejection of Claims 1, 4-13, 16 and 18-21 under 35 U.S.C. §102(b):**

At page 2 of the Office Action, the Examiner rejected claims 1, 4-13, 16, and 18-21 under 35 U.S.C. §102(b) as being anticipated by Ohki et al. (U.S. 5,715,811). In view of the amendments herein, Applicant respectfully traverses the rejection.

Amended independent claim 1 recites, in part, “wherein features comprising a plurality of elevations forming an outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis”.

Independent claim 16 recites: “features comprising a plurality of elevations forming an outer contour are symmetrical with respect to a transverse plane that bisects the longitudinal axis”.

Independent claim 21 recites: “wherein features comprising a plurality of elevations forming an outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis”.

Applicant submits that Ohki does not disclose or suggest such aspects.

Ohki *et al.* relates to an inhaling piece formed with an inhaling mouth 3 and a holder accommodating section 2. The capsule holder 7 is formed with a capsule accommodating hole 7 and airflow passages 8 which extend axially. (See Ohki et al. Abstract). On page 2 of the subject Office Action, claim 4 has been rejected under 102(b) over Ohki et al. The features of claim 4 are now included into each of the independent claims 1, 16 and 21. Ohki et al. generally discloses capsule 17 in Fig. 7 for example, to be inserted into the capsule holder. However, Ohki et al. does not disclose in the specification or the diagrams that capsule 17 comprises a plurality of elevations as recited in the independent claims 1, 16 and 21. In accordance with 37 CFR 104 (c) (2) the particular part of

the reference relied upon for the rejection must be designated as nearly as practicable. However, nowhere does the Examiner point out, nor can applicant find where Ohki et al. discloses a capsule with a plurality of elevations on the outer contour as recited in the subject independent claims. Hence, it is concluded that Ohki *et al.* is silent regarding such claimed aspects.

In view of the above, claims 1, 16, and 21 are patentable. As claims 6-13 and 18-20 depend from claims 1 and 16, respectively, and recite additional patentable features, the subject dependent claims are, therefore, likewise patentable.

## **II. Rejection of Claims 1, 4-13, 16 and 18-21 under 35 U.S.C. §102(b):**

At page 3 of the Office Action, the Examiner rejected claims 1, 4-16, and 18-21 under 35 U.S.C. §102(b) as being anticipated by Hochrainer et al. (U.S. 5,947,118). In view of the amendments herein, Applicant respectfully traverses the rejection.

The requirements of claims 1, 16, and 21 are discussed above. Applicant submits that Hochrainer does not disclose or suggest features comprising a plurality of elevations forming an outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis as recited in independent claim 21 and similarly in other independent claims. Hochrainer et al. discloses a capsule holder for insertion and fixing of pharmaceutical capsules consisting of a plate (2) with a recess (1) in which there are at least three ribs arranged parallel to the central axis and at unequal spacings from one another between which the capsules can be clamped both by their upper part and by their lower part in such a way that they do not fall out during normal handling but can be readily removed. (*See* Hochrainer et al. Abstract). However, nowhere does Hochrainer et al. teach or suggest a capsule comprising a plurality of elevations that are symmetrical with respect to a transverse plane which bisects the longitudinal plane as recited in independent claims 1, 16 and 21.

In view of at least the aforementioned, it can be concluded that Hochrainer et al. does not disclose an identical invention as recited in the subject claims. Hence, this rejection should be withdrawn with respect to claims 1, 16, 21 and all claims depending therefrom.

**III. Rejection of Claims 1, 4-13, 16 and 18-21 under 35 U.S.C. §103(a):**

At pages 4-5 of the Office Action, the Examiner has rejected: claims 1, 4-13, 16, and 18-21 under 35 U.S.C. §103(a) as being unpatentable over Ohki (U.S. 5,715,811). In view of the amendments herein, Applicant respectfully traverses the rejection.

The aforementioned deficiencies of Ohki are not overcome under a §103 analysis. Indeed, to arrive at the present invention as claimed one would need to imbue the Ohki capsule with structure that simply does not exist. This would clearly be improper. For example, Ohki et al. does not teach or suggest a capsule “wherein features comprising a plurality of elevations forming an outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis” as recited in independent claims 1, 16 and 21.

In view of the above, the teachings of Ohki do not suggest the present invention as recited in claims 1, 16, and 21, and claims 1, 16, and 21 are, therefore, patentable. As claims 4-15 and 18-20 depend from claims 1 and 16, respectively, and recite additional patentable features, the subject dependent claims are, therefore, patentable.

Accordingly, Applicant respectfully requests that the Examiner’s §103 claim rejection over Ohki et al. be withdrawn.

**IV. Rejection of Claims 1, 4-13, 16 and 18-21 under 35 U.S.C. §103(a):**

At pages 4-5 of the Office Action, the Examiner has rejected: claims 1, 4-13, 16, and 18-21 under 35 U.S.C. §103(a) in view of Hochrainer et al. (U.S. 5,947,118). Applicant respectfully traverses the rejection and requests withdrawal of the rejection for at least the following reasons.

As mentioned *supra*, Hochrainer et al. relates to a capsule holder for inserting and fixing pharmaceutical capsules but does not teach or suggest a capsule “wherein features comprising a plurality of elevations forming an outer contour of the capsule are symmetrical with respect to a transverse plane which bisects the longitudinal axis” as recited in independent claims 1, 16 and 21. As claims 4-15 and 18-20 depend from claims 1 and 16, respectively, and recite additional patentable features, the subject dependent claims are, therefore, patentable. Accordingly, Applicant

respectfully requests withdrawal of this §103 rejection over Hochrainer et al.

**V. New claims 22-26**

New claims 22-26 recite subject matter that is patentable over the art of record for at least the same reasons as noted above. In particular, claim 22 recites: “wherein the elevations are in a form comprising one or more of, ribs with sharp edges, ribs with soft undulating transitions, form of pins or combinations thereof.” New claim 23 depending from claim 22 recites, “the elevations are in the form of ribs with sharp edges or with soft undulating transitions or combinations thereof and the ribs are arranged parallel to the longitudinal axis or perpendicular to the longitudinal axis or askew with respect to the longitudinal axis.” New claim 24 depending from claim 23 recites an inhaler, “wherein the ribs are arranged parallel to the longitudinal axis and the capsule chamber comprises at least one additional rib.” New claim 25 recites, “wherein length of the at least one additional rib is selected such that the at least one additional rib guides an axial movement of the capsule within the capsule chamber without blocking the movement.” While claim 26 recites, “the at least one additional rib extends over a length of the capsule chamber.” Support for these claims can be found in the specification as filed page 8 lines 10-30.

**Conclusion:**

In view of the foregoing, Applicant submits that the instant claims are in condition for allowance. Early and favorable action is earnestly solicited. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

Respectfully submitted,

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